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R. v. Harriott, [2003] 1 S.C.R. 39, 2003 SCC 5

Allan Harriott

Appellant

v.

Her Majesty The Queen

Respondent

Indexed as: R. v. Harriott

Neutral citation: 2003 SCC 5.

File No.: 29118.

2003: February 11.

Present: McLachlin C.J. and Gonthier, Iacobucci, Major and Bastarache JJ.

on appeal from the court of appeal for ontario

Criminal law — Charge to jury — Alibi — Trial judge not erring in his instructions to jury on alibi.

Criminal law — Charge to jury — Vetrovec warning — Trial judge giving adequate warning in respect of evidence of accomplice and of admitted perjurer.

Cases Cited

Referred to: *Vetrovec v. The Queen*, [1982] 1 S.C.R. 811.

APPEAL from a judgment of the Ontario Court of Appeal (2002), 58 O.R. (3d) 1, 161 C.C.C. (3d) 481, [2002] O.J. No. 387 (QL), dismissing the accused's appeal from his conviction for robbery, forcible confinement, possession of a weapon for the purpose of committing an indictable offence and wearing a disguise. Appeal dismissed, Iacobucci and Major JJ. dissenting.

Christopher Hicks and Victor Giourgas, for the appellant.

Christine E. Bartlett-Hughes, for the respondent.

The following is the judgment delivered orally by

1 THE CHIEF JUSTICE — This is an appeal as of right. The majority of the Court would dismiss the appeal for the reasons of MacPherson J.A. in the Court of Appeal, Iacobucci and Major JJ. dissenting.

2 IACOBUCCI AND MAJOR JJ. (dissenting) — We agree with our colleagues on the issue of the alibi instructions. However, in our opinion, the testimony of the young offender witness and Ms. Divito required, in the words of Dickson J. (as he then was) in *Vetrovec v. The Queen*, "a clear and sharp warning to attract the attention of the juror to the risks of adopting, without more, the evidence of the witness" ([1982] 1 S.C.R. 811, at p. 831). We agree with Doherty J.A., dissenting in the Ontario Court of Appeal, that the charge of the trial judge when read as a whole did not meet this standard. Accordingly, we would allow the appeal, set aside the judgment of the Court of Appeal, and order a new trial.

Judgment accordingly.

Solicitors for the appellant: Hicks Block Adams, Toronto.

Solicitor for the respondent: Ministry of the Attorney General, Toronto.

